

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 375 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA
and
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
 2. To be referred to the Reporter or not? No.
 3. Whether Their Lordships wish to see the fair copy of the judgement? No.
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
 5. Whether it is to be circulated to the Civil Judge? No.
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LAXMANBHAI U VANKAR

Versus

STATE OF GUJARAT

Appearance:

MR KG SHETH for Petitioner
MR SR DIVETIA, A.P.P. for Respondent.

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE S.D.PANDIT

Date of decision: 02/05/97

ORAL JUDGEMENT (Per N.J. Pandya,J.)

On 16-10-1988 at about 12-00 noon the accused is said to have given axe blows on head and legs of the deceased Ishwarbhai Gordhanbhai Vasava on account of

dispute pertaining to the 'wada' land. This happened at village Kotali Ta. Sankheda District Baroda.

2. The complaint given by Maganbhai Chandubhai, cousin of the deceased resulted in investigation and chargesheet which in turn ended up as Sessions Case No.226/88 tried by the learned Additional Sessions Judge, Baroda. Learned trial Judge accepted the case of the prosecution and by his judgment dated 29-4-1989 held the accused guilty for the offence punishable u/s 302 of the IPC and awarded Rigorous Imprisonment for life.

3. For the death being homicidal there is no dispute. P.M. note exh.7 proved through the deposition of Dr. Shah p.w. no. 1 exh. 6 at page 7 of the paper-book clearly reveals that there were three contused wounds on head which has resulted in depressed fracture on frontal bone and there was extra dural hemorrhage.

4. The question therefore will be whether prosecution has proved beyond reasonable doubt that the accused appellant was responsible for the incident ?

5. For this purpose, deposition of Maganbhai Chandubhai p.w. no. 2 exh.8 page 9 of the paper-book is first one to be looked at. As per the case of the prosecution the deceased had stated before him that Laxman Ukad had given axe blows to the deceased. No doubt, this witness was not present at the time of the incident. He was called by the widow and mother of the deceased and therefore he came on the scene of offence and had a talk with the deceased.

6. Widow Madhubhai p.w. 3 Exh. 10 has graphically described the incident. Same is the case with regard to the other witness Mangiben mother of the deceased p.w. 4 exh. 11.

7. In cross-examination of both these witnesses an attempt was made by the defence to make out a case that the deceased himself being aggressor rushed with an axe towards the accused. There is a further suggestion that there was quarrel between the accused and the deceased and in the process the incident happened.

8. This is given a complete go-bye in the further statement of the accused that came to be recorded at the end of the trial. Defence taken in the further statement exh. 4 is of total denial. Thus, there is no reason to discard the testimony of the said witnesses.

9. Therefore, in our opinion, conviction recorded by

the learned Additional Judge is well merited. There is
no merit in the appeal and hence rejected.

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